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12 *Commonwealth Casino Commission, Edward C. Deleon Guerrero, Rafael S. Demapan, Mariano Taitano, Martin Mendiola, and Ramon M. Dela Cruz, in their official and personal capacities*

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN MARIANA ISLANDS**

15 IMPERIAL PACIFIC INTERNATIONAL) Case No. 1:24-cv-00001
16 (CNMI) LLC,)
17 Plaintiff,)
18 vs.)
19 COMMONWEALTH OF THE NORTHERN)
20 MARIANA ISLANDS, et. al.,)
21 Defendants.)
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2 The First Amended Complaint alleges four causes of action:
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5 1. First Cause of Action. The first cause of action accuses Defendant Commonwealth
6 Casino Commission (“CCC”) (and the Commonwealth of the Northern Mariana Islands
7 (“CNMI”)) of “Unconstitutional Impairment” of the Contracts Clauses of the U.S. and CNMI
Constitutions (ECF No. 38 at 15).

8 2. Second Cause of Action. The Second Cause of Action accuses Defendants of violating
9 the Due Process Clauses of the U.S. and CNMI Constitutions and is brought under 42 U.S.C §
10 1983 (ECF No. 38 at 17);

11 3. Third Cause of Action. The Third Cause of Action accuses Defendants (and the CNMI)
12 of violating Article IV of the CNMI Constitution and is brought under 42 U.S.C § 1983. ECF
13 No. 38 at 19 (ECF No. 38);

14 4. Fourth Cause of Action. The Fourth Cause of Action accuses Defendants (and the CNMI)
15 of breaching the Casino License Agreement (ECF No. 38 at 20-21).

16 In deciding Defendants’ motion to dismiss, the court is presented with one simple issue: the
17 doctrine of Res Judicata. Under the doctrine, federal courts give “preclusive effect” to the
18 litigation of claims the “parties or their privies” raised or could have raised in a prior
19 proceeding—including a state-court proceeding—where there is a judgment on the merits.

20 Should the court dismiss this above-captioned suit based on res judicata? Because IPI
21 attempts to relitigate issues that were or could have been raised in a prior state-court proceeding
22 involving the same “parties or their privies,” and which led to a judgment on the merits, the suit
23 is barred under res judicata.

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28 **II. BACKGROUND**

1 **1. The 2020 Enforcement Actions**

2 In 2020, the CCC initiated five enforcement actions against Plaintiff:

3 i. Enforcement Action 2020-001, alleging the following claims:

4

5 (1) IPI failed to pay the Community Benefit Fund contribution required by
6 Amendment #3 to the Casino License Agreement (“CLA”), in violation of
7 Commonwealth Casino Commission Regulations § 175-10.1-675(b)(1) and §
8 175-10.1-1805(b)(15); and
9

10 (2) and (2) IPI violated the CLA by failing to pay the Community Benefit Fund
11 contribution required by Amendment #5 to the CLA, in violation of
12 Commonwealth Casino Regulations § 175-10.1-675(b)(1) and § 175-10.1-
13 1805(b)(15) (ECF No. 38-3 at 2);

14 ii. Enforcement Action 2020-002, alleging the following claims:

15

16 (1) IPI violated 4 CMC § 2306(b) by failing to pay the annual license fee due
17 August 12, 2020;

18 (2) IPI violated the CLA by failing to pay the annual license fee when due for
19 more than 12 hours, in violation of § 175-10.1-610(b);
20

21 (3) IPI violated § 175-10.1-1805(b)(15) by breaching the CLA by failing to make
22 the required annual license fee for more than 12 hours after payment was due;
23

24 (4) that the CCC should issue a declaratory order declaring that IPI’s failure to
25 pay the annual license fee “is an unsuitable method of operation” and that IPI
26 “immediately” pay the fee on the effective date of the order (ECF No. 38-3 at 3-
27 4);
28

1 iii. Enforcement Action 2020-003, alleging the following claims:

2

3 (1) IPI failed violated Commission Order 2020-003 by failing to maintain required
4 cash or cash equivalents in a “restricted” CNMI or United States bank,
5

6 (2) IPI violated Commission Order 2020-003 “when its highest-ranking
7 executives failed to detail the means by which it would comply with the Order,”
8

9 (3) that the CCC should issue a declaratory order declaring that IPI’s failure to
10 comply with the required cash or cash equivalents and detail the means by which
11 it would comply with the capital requirements under Commission Order 2020-
12 003 “amount to unsuitable methods of operation and requiring immediate
13 compliance,”

1 (4) that the CCC should declare IPI's "fiscal and financial capability as owner and
2 operator of the casino has significantly diminished such that the public interest is
3 no longer protected" and the IPI be required to cure the financial deficiency
sufficient to "pay all debts as they become due" (ECF No. 38-3 at 5);

4 iv. Enforcement Action 2020-004, alleging the following claims:

5 (1) Plaintiff violated Commission Order 2020-004 by failing to pay accounts
6 payable that were over 89 days old;

7 (2) IPI violated Commission ORDER 2020-004 by failing to make required
8 certifications under the Order,

9 (3) that CCC should issue a declaratory order declaring that IPI's failure to comply
10 the payment and certification requirements under Commission Order 2020-004
11 "are unsuitable methods of operation" and that IPI is required to "pay all amounts
12 required by Commission Order 2020-004" upon the effective date of the requested
order,

13 (4) that CCC should issue a declaratory order declaring that IPI is insolvent and
14 is unable to "fully construct the entirety of the Initial Gaming Facility located in
15 Garapan, Saipan, CNMI in accordance with applicable laws, regulations and
16 codes" (ECF No. 38-3 at 5-6); and

17 v. Enforcement Action 2020-005, alleging the following claims:

18 (1) IPI violated 4 CMC § 2309 by failing to pay for more than 12 hours the Casino
19 Regulatory Fee when due,

20 (2) IPI violated CCC Regulation § 175-10.1-1225 by failing to pay the Casino
21 Regulatory Fee when due for more than 12 hours,

22 (3) IPI breached the CLA by failing to pay the casino license fee when due for
23 more than 12 hours,

24 (4) that CCC should issue a declaratory order declaring that IPI's failure to pay
25 the Casino Regulatory Fee when due "amounts to an unsuitable method of
26 operation" and that IPI is required to pay the Casino Regulatory Fee
27 "immediately upon the effective date" of the requested order (ECF No. 38-3
28 at 6).

29 ECF No. 38-3 at 2-6. Enforcement Actions 2020-001 and 2020-002 were consolidated into
30 Enforcement Action 2020-001. ECF No. 38-3 at 2. Enforcement Actions 2020-003, 2020-004,
31 and 2020-005 were consolidated into Enforcement Action 2020-003. ECF No. 38-3 at 2.

1
2. **Commission Order No. 2021-002**

3 On April 22, 2021, the CCC issued Order No: 2021-002—“**Final Order for Enforcement**
4 **Actions 20-001 (consolidated) and 20-003 (consolidated).**” The Order references two
5 hearings: (1) a February 25, 2021 evidentiary hearing on Enforcement Action 2020-001
6 (consolidated), and (2) a March 2, 2021 evidentiary hearing on Enforcement Action 2020-003
7 (consolidated). ECF No. 38-3. Based on the hearings, CCC granted the requested relief under
8 each of the enforcement actions. ECF No. 38-3. This includes \$18.65 million towards the Annual
9 License Fee and Annual Regulatory due under Enforcement Actions 2020-002 and 2020-005,
10 respectively, in addition to \$6.6 million in fines and the suspension of IPI’s casino gaming
11 license. ECF No. 38 at 6.
12

13
14. **The State Court Proceedings**

15 On November 5, 2021, IPI appealed the Commission Order No. 2021-002 to the
16 Commonwealth of the Northern Mariana Islands Superior Court. ECF No. 38 at 6. IPI alleged
17 the Order was “arbitrary, capricious, an abuse of discretion and otherwise not in accordance with
18 law and unwarranted by the facts.” ECF No. 38 at 6. On March 15, 2022, the Superior Court
19 affirmed the Order. ECF No. 38 at 7.

21 The Superior Court found that IPI “offered no defense and did not contest any of the claims
22 alleged in Enforcement Actions 2020-003, 2020-004, or 2020-005.” *Commonwealth Casino*
23 *Comm’n v. Imperial Pac. Int’l*, 2023 MP 8 ¶ 50 (citing *Commonwealth Casino Comm’n v.*
24 *Imperial Pac. Int’l (CNMI), LLC*, No. 21-0173 (NMI Super. Ct. Mar. 15, 2022) (Order Affirming
25 the Casino Commission’s Suspension of Petitioner’s Exclusive Casino License and Monetary
26 Penalties at 25).
27

1 On April 11, 2022, IPI appealed the Superior Court’s order to the CNMI Supreme Court.
2 ECF No. 38 at 7. The Court affirmed in part and reversed in part. ECF No. 38 at 7.
3

4 As to Enforcement Action 2020-001 (Community Benefit Fund contributions due in 2018
5 and 2019), the Court found that “CCC erred in finding IPI liable for the violations contained in
6 Complaint 001 and imposing sanctions.” *Commonwealth Casino Comm’n v. Imperial Pac.*
7 *Int’l*, 2023 MP 8 ¶ 33.

8 As to Enforcement Action 2020-002, the Court held that while “4 CMC § 2306 does not
9 expressly contain a force majeure clause,” the clause is applicable to the Annual License Fee
10 because the Commonwealth Lottery Commission was granted statutory authority to negotiate the
11 terms of the gaming license, which “Clause 5 of the CLA” represents. *Commonwealth Casino*
12 *Comm’n v. Imperial Pac. Int’l*, 2023 MP 8 ¶ 36.

13 As to Enforcement Actions 2020-003, 2020-004, and 2020-005, the Court affirmed both the
14 CCC’s finding under Commission Order No. 2021-002 and the Superior Court’s finding that IPI
15 “offered no defense” to the claims alleged under the enforcement actions. *Commonwealth*
16 *Casino Comm’n v. Imperial Pac. Int’l*, 2023 MP 8 ¶ 50. The Court also affirmed the CCC’s
17 sanctions under Commission Order No. 2021-002 as to the enforcement actions, reasoning that
18 IPI admitted to the violations at the administrative hearing and “stated multiple times that it was
19 not raising any defense, and even asked to be held accountable.” *Commonwealth Casino*
20 *Comm’n v. Imperial Pac. Int’l*, 2023 MP 8 ¶ 62.

21 Notably, the Court held that the Annual License Fees for 2020 and the following years have
22 accrued and continue to accrue, and CCC must now decide on a reasonable deadline for IPI to
23 pay them. *Commonwealth Casino Comm’n v. Imperial Pac. Int’l*, 2023 MP 8 ¶ 64. With respect
24 to sanctions the Order imposed on IPI involving Enforcement Actions 2020-003, 2020-004, and
25

1 2020-005, the Court affirmed—finding that “substantial evidence supports them because IPI
 2 admitted to the violations and offered no defense.” *Commonwealth Casino Comm’n v. Imperial*
 3 *Pac. Int’l*, 2023 MP 8 ¶ 62, 64.
 4

5 III. Legal Standard

6 Under Federal Rule of Civil Procedure 8(a)(2), the plaintiff must provide “a short and
 7 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).
 8 While “detailed factual allegations” are not required under the rule, it “demands more than an
 9 unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662,
 10 677–78 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The factual
 11 allegations must be sufficient “to raise a right to relief above the speculative level.” *Bell Atl.*
 12 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). It is insufficient for a pleading to offer “labels and
 13 conclusions” or “a formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*,
 14 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). 550
 15 U.S., at 555, 127 S.Ct. 1955. The same goes for “naked assertion[s]” devoid of “further factual
 16 enhancement.” *Id.*, at 557, 127 S.Ct. 1955.
 17

18 A complaint must state a “plausible claim for relief” to “survive[] a motion to dismiss.”
 19 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *See also Id.* (“To survive a motion to dismiss, a
 20 complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that
 21 is plausible on its face.’”) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).
 22 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
 23 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft*
 24 *v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556
 25 (2007)).
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 27
 28

1 “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more
 2 than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662,
 3 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). The “tenet that
 4 a court must accept as true all of the allegations contained in a complaint is inapplicable to legal
 5 conclusions.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “While legal conclusions can provide
 6 the framework of a complaint, they must be supported by factual allegations.” *Ashcroft v. Iqbal*,
 7 556 U.S. 662, 679 (2009).

8 Dismissal under Federal Rule of Civil Procedure 12(b)(6) on the basis of res judicata is
 9 appropriate when “the defense raises no disputed issues of fact.” *See Scott v. Kuhlmann*, 746 F.2d
 10 1377, 1378 (9th Cir. 1984). (“The defendants raised *res judicata* in their motion to dismiss under
 11 Rule 12(b)(6), rather than in a responsive pleading. Ordinarily affirmative defenses may not be
 12 raised by motion to dismiss...but this is not true when, as here, the defense raises no disputed
 13 issues of fact.”).

14 In deciding Defendants’ motion to dismiss, the court is not confined to the allegations in
 15 the complaint where the complaint is “accompanied by attached documents,” and which the court
 16 may consider as to whether “the plaintiff can prove any set of facts in support of the claim.” *Roth*
 17 *v. Garcia Marquez*, 942 F.2d 617, 625 n. 1(1991) (quoting *Durning v. First Boston Corp.*, 815
 18 F.2d 1265, 1267 (9th Cir.1987)). See also *Murillo v. Taylor*, No. 14CV876-WQH WVG, 2015
 19 WL 4488060, at *14 (S.D. Cal. July 22, 2015) (“If a complaint is accompanied by attached
 20 documents, the court is not limited by the allegations contained in the complaint. These
 21 documents are part of the complaint and may be considered in determining whether the plaintiff
 22 can prove any set of facts in support of the claim.”). Citing *Roth v. Garcia Marquez*, 942 F.2d
 23 617, 625 n. 1(1991) (quoting *Durning v. First Boston Corp.*, 815 F.2d 1265, 1267 (9th Cir.1987)).

1 A plaintiff's conclusions "are not entitled to deference" where they are "undermined" by
 2 "external, albeit integral or incorporated, sources. *Murillo v. Taylor*, No. 14CV876-WQH WVG,
 3 2015 WL 4488060, at *14 (S.D. Cal. July 22, 2015).
 4

5 **IV. ARGUMENT**

6 **1. Res Judicata Precludes the Instant Suit**

7 Federal courts generally follow the doctrines of res judicata and collateral estoppel. *Allen v.*
 8 *McCurry*, 449 U.S. 90, 94–96 (1980). "Under res judicata, a final judgment on the merits of an
 9 action precludes the parties or their privies from relitigating issues that were or could have been
 10 raised in that action." *Allen v. McCurry*, 449 U.S. 90, 94, 101 S. Ct. 411, 414, 66 L. Ed. 2d 308
 11 (1980) (citing *Cromwell v. County of Sac*, 94 U.S. 351, 352 (1876)). Res judicata also precludes
 12 "litigation of all grounds for, or defenses to, recovery that were previously available to the parties,
 13 regardless of whether they were asserted or determined in the prior proceeding." *Brown v. Felsen*,
 14 442 U.S. 127, 131 (1979) (citing *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S.
 15 371, 378, 60 S.Ct. 317, 320, 84 L.Ed. 329 (1940)).
 16

17 Res judicata applies when "there is "(1) an identity of claims, (2) a final judgment on the
 18 merits, and (3) identity or privity between parties." *Owens v. Kaiser Found. Health Plan, Inc.*,
 19 244 F.3d 708, 713–14 (9th Cir. 2001). The term "privities" is broadly construed—provided that
 20 where "new parties represent the same interests," there is privity between the parties. *See Murillo*
 21 *v. Taylor*, No. 14CV876-WQH WVG, 2015 WL 4488060, at *18 (S.D. Cal. July 22, 2015).
 22 There is an identity of claims where the claims "arise from the same transaction" or where the
 23 claims "involve a common nucleus of operative facts." *Lucky Brand Dungarees, Inc. v. Marcel*
 24 *Fashions Grp., Inc.*, 140 S. Ct. 1589, 1595, 206 L. Ed. 2d 893 (2020).
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1 Res judicata is applicable to suits under § 1983. *Migra v. Warren City Sch. Dist. Bd. of*
 2 *Educ.*, 465 U.S. 75, 84 (1984). *E.g., Allen v. McCurry*, 449 U.S. 90, 95, 101 S. Ct. 411, 415, 66
 3 L. Ed. 2d 308 (1980) (“The federal courts generally have also consistently accorded preclusive
 4 effect to issues decided by state courts.”); *Scoggin v. Schrunk*, 522 F.2d 436, 437 (9th Cir. 1975)
 5 (Holding that Res Judicata bars the litigation of “federal constitution” claims based on an asserted
 6 causes of action that were the “subject of a state action, and where the parties are the same,”—
 7 irrespective of whether the causes of action were “asserted in state court or not”—“for the reason
 8 that the state judgment on the merits serves not only to bar every claim that was raised in support
 9 of the granting of the desired relief.”

10
 11 Federal courts look to the res judicata rules of the state from which the original judgment was
 12 rendered to determine whether the claim is “entitled to the same preclusive effect in a subsequent
 13 federal § 1983 suit” in the state court. *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S.
 14 75, 83 (1984). The CNMI Supreme Court described the res judicata rule:

15
 16 The rule provides that when a court of competent jurisdiction has entered a final judgment
 17 on the merits of a cause of action, the parties to the suit and their privies are thereafter
 18 bound “*not only as to every matter which was offered and received to sustain or defeat
 19 the claim or demand, but as to any other admissible matter which might have been offered
 20 for that purpose.*” *Cromwell v. County of Sac*, 94 U.S. 351, 352 [24 L.Ed 195]. The
 21 judgment puts an end to the cause of action, which cannot again be brought into litigation
 22 between the parties upon any ground whatever, absent fraud or some other factor
 23 invalidating the judgment.

24
 25 ECF No. 36 at 9 (citing *Santos v. Santos*, No. 90-041, 1992 WL 135876, at *48-49 (N. Mar. I.
 26 Mar. 25, 1992) (emphasis added) (citing *Commissioner v. Sunnen*, 333 U.S. 591, 597 (1948)).

27
 28 Here, the asserted causes of action arise from the same transaction—Commission Order No.
 29 2021-002. As stated in the First Amended Complain, IPI appealed Commission Order No. 2021-
 002 to the CNMI Superior Court. ECF No. 38 at 6-7. After the Superior Court affirmed the
 Order, IPI appealed to the Supreme Court. ECF No. 38 at 7. There is also privity or identity

1 between the parties Defendants Edward Guerrero, Rafael Demapan, Mariano Taitano, Martin
2 Mendiola, and Ramon Dela Cruz are members of the Commonwealth Casino Commission.
3

4 Furthermore, each of the asserted causes of actions raises claims that were or could have been
5 raised in the state-court proceedings. For example, with respect to the First Cause of Action, IPI
6 challenges the annual regulatory fee statute 4 CMC § 2309(a); the minimum capital requirements
7 pursuant to CCC Regulations codified under NMIAC § 175-10.1; and the CCC's statutory
8 authority to interpret and adjudicate disputes arising from the CLA pursuant to 4 CMC § 2314.
9 ECF No. 38 at 15-17. The cited authorities were the among the authorities the CCC relied upon
10 in issuing Commission Order No. 2021-002. For example, the CCC found that IPI violated 4
11 CMC § 2306(b) by failing to pay, for more than twelve hours, the annual license fee when due
12 on August 12, 2020. ECF No. 38-3 at 3. IPI proffers that application of the statute during the
13 Covid-19 period constituted an “unconstitutional impairment of its contractual right under the
14 force majeure clause” of the Casino License Agreement.” ECF No. 38 at 16. Yet, IPI raised the
15 force majeure issue in its appeals from the Commission Order No. 2021-002 to the Superior
16 Court and Supreme Court, arguing that CCC erred in ruling that force majeure defense is
17 inapplicable to IPI’s failure to pay the Annual License Fee during the force majeure event.
18 *Commonwealth Casino Comm’n v. Imperial Pac. Int’l*, 2023 MP 8 ¶ 46 (“While IPI would like
19 us to find that the COVID-19 pandemic excused its obligation to pay outright, that would
20 contradict the plain language of the CLA, which excuses IPI’s default during a force majeure
21 event, but not its obligation to pay.”).
22

23 Furthermore, the First Amended Complaint points to no other Commonwealth Casino
24 Commission order from which IPI seeks relief. There is simply no question that IPI—after
25 having its day in court—wishes to relitigate the claims raised or claims it could have raised in
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1 the prior state-court proceedings. In fact IPI admits as much in wishing for the court to “order
 2 Defendants to vacate, nullify any and all adverse administrative decisions against IPI that failed
 3 to comply with the force majeure clause of the CLA, including but not limited to Commission
 4 Order No. 2021-002.” ECF No. 38 at 23.
 5

6 Res Judicata, of course, preserves the “finality of orders and judgments” where the parties
 7 “have had a full and fair opportunity to litigate their claims.” *Friends of Gualala River v. Gualala*
 8 *Redwood Timber, LLC*, 552 F. Supp. 3d 924, 933 (N.D. Cal. 2021). Courts have reasoned that
 9 such parties “should not be” allowed to “undermine the finality of judicial proceedings by
 10 raising” challenges in a subsequent proceeding “arising from the same material facts” that existed
 11 “at the time of prior judgment or order.” *Id.*
 12

13 There is no reason to believe that IPI was prevented or did not have a fair opportunity to
 14 litigate the issues or claims under each of the asserted causes of actions or raise affirmative
 15 defenses. IPI did not dispute and did not raise any affirmative defense for Enforcement Actions
 16 2020-003, 2020-004, and 2020-005. ECF No. 3-3 at 4. In fact, IPI raised due process claims on
 17 other grounds. *Commonwealth Casino Comm'n v. Imperial Pac. Int'l*, 2023 MP 8 ¶ 63.
 18 Furthermore, IPI fails to allege that it was deprived of an opportunity to litigate the causes of
 19 action in the prior state-court proceeding. Indeed, IPI already had its “day in court.” Further
 20
 21

2. Defendants Are not persons within the meaning of 42 U.S.C. § 1983

22 The above-captioned suit against the Defendants in their official capacity must be
 23 dismissed because persons sued in their official capacities are not persons within the meaning of
 24 42 U.S.C. § 1983. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71, 109 S. Ct. 2304, 2312,
 25 105 L. Ed. 2d 45 (1989). Government official sued in their official capacities is essentially a suit
 26 against the governmental entity. *Id.* (Holding that “a suit against a state official in his or her
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 28

1 official capacity is not a suit against the official but rather is a suit against the official's office."').
2 Further, section 1983 does not allow a person to file suits against the state given that such suits
3 are not permitted unless the state waives its Eleventh Amendment immunity. *Will v. Michigan*
4 *Dep't of State Police*, 491 U.S. 58, 66, 109 S. Ct. 2304, 2309, 105 L. Ed. 2d 45 (1989). .

5 Accordingly, the Defendants sued in their official capacities is essentially a suit against
6 the state and because the state is not a person within the meaning of section 1983, each of the
7 suit against the Defendants in their official capacities is barred by the Eleventh Amendment and
8 must be dismissed. Defendant CCC must also be dismissed from this suit.
9

10 Whether a Commonwealth entity can be sued in federal court depends on Commonwealth
11 law. *Norita v. Commonwealth of the Northern Mariana Islands Department of Public Safety* et
12 al., WL 150875 at *2 (D. N. Mar. I. Jan.10, 2019). Id. ("The capacity of a governmental entity
13 to be sued in federal court is determined by the law of the state where the district court is
14 located.") (citing Fed. R. Civ. P. 17(b)). The Commonwealth law does not allow Defendant CCC
15 to be sued in federal court. And while the Commonwealth waived its sovereign immunity with
16 respect to certain claims, it does not consent to be sued upon those claims in federal court. 7
17 CMC § 2251. The Commonwealth also granted the Commonwealth Trial Court "exclusive
18 original jurisdiction" to hear them. *Id.* Thus the CCC must also be dismissed from this suit.
19

20 **V. CONCLUSION**

21
22 For the foregoing reasons, the court should dismiss this suit with prejudice pursuant to
23 Federal Rule of Civil Procedure 12(b)(6).
24

25 Respectfully submitted,
26

27
28
OFFICE OF THE ATTORNEY GENERAL
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1
2 Date: April 25, 2024

3 /s/ Carl Dela Cruz

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